

REMARKS

The Examiner rejected Claims 1-18 under 35 U.S.C. §102(e) as being anticipated by Spence, et al., U.S. Patent No. 6,540,895 (Spence). It is respectfully submitted that Claims 1-18 are patentable over Spence.

Specifically, Claim 1 recites a photo transmitted (6) and a photo receiver (7) which are disposed outside the component (1) and are directed to the inclined surfaces (3', 3'') in the transparent area of the limitation wall (3) of a microchannel of the microfluidic component. This is not disclosed in Spence.

Spence discloses, in Figures 14 to 15 and the pertinent specification in Column 13, line 35 to 14, line 42, a cell sorting device having a detection window respectively detection region in a channel having clearly and exclusively parallel walls in the detection region. To determine whether a cell has a desired characteristic, the detection region may include an apparatus for stimulating a reporter for that characteristic to emit measurable light energy, *e.g.*, a light source such as a laser, laser diode, high-intensity lamp (*e.g.* mercury lamp), and the like. Fluorescence produced by a reported is excited using a laser beam focused on cells passing through the detection region. In each case, the light source is directed to the detection region, *i.e.*, through parallel walls of the channel.

Clearly, the presence of a gas in the device taught by Spence, et al, does not result in a total reflection of a light ray from a phototransmitter so that it impinges on a photoreceiver. Clearly a liquid waiting in the microchannel is not the precondition that a light ray emitted by the light source enters the microchannel and reduces or prohibits incidence of light in the photoreceiver.

A rejection based on U.S.C. § 102 as in the present case, requires that the cited reference disclose each and every element covered by the Claim. Electro Medical Systems S.A. v. Cooper Life Sciences, 32 U.S.P.Q. 2d 1017, 1019 (Fed. Cir. 1994); Lewmar Marine Inc. v. Barient Inc., 3 U.S.P.Q. 2d 1766, 1767-68 (Fed. Cir. 1987); Verdegaal Bros., Inc. v. Union Oil Co., 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). The federal Circuit has mandated that 35 U.S.C. §102 requires no less than “complete anticipation . . . [a]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983); See also, Electro Medical Systems, 32 U.S.P.Q. 2d at 1019; Verdegaal Bros., 2 U.S.P.Q. 2d at 1053.

Since Spence fails to disclose each and every feature of independent Claim 1, Spence, as a matter of law, does not anticipate the present invention, as defined by said independent claim.

In view of the above, it is respectfully submitted that Spence does not anticipate or make obvious the present invention as defined in Claim 1, and the present invention is patentable over Spence.

Claims 2-18 depend on Claim 1 and are allowable for the same reasons Claim 1 is allowable and further because of specific features recited therein which, when taken alone and/or in combination with features recited in Claim 1 are not disclosed or suggested in the prior art.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects, in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's

amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully Submitted,

Alexander Zinchuk

Alexander Zinchuk

Reg. No. 30,541

Dated: December 19, 2003
Sidley Austin Brown & Wood LLP
787 Seventh Avenue
New York, N.Y. 10019
Tel.: (212) 906-2585

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage and addressed to: Commissioner for Patents, Washington, DC 20231 on December 19, 2003.

Alexander Zinchuk